



DEPARTMENT OF PLANNING AND BUILDING

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TO: BOARD OF SUPERVISORS

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PLANNING AND BUILDING

DATE: MARCH 2, 2010

SUBJECT: CONTINUED HEARING TO CONSIDER AMENDMENTS TO THE LAND USE
ORDINANCE, COASTAL ZONE LAND USE ORDINANCE AND LOCAL
COASTAL PLAN RELATING TO GRADING AND STORMWATER
MANAGEMENT IN ORDER TO COMPLY WITH NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE TWO
REQUIREMENTS.

RECOMMENDATION

That the Board of Supervisors:

- 1) Consider the revisions identified in Exhibit A (attached).
- 2) Take final action on General Plan Amendment LRP2008-00007 by adopting and instructing the chairperson to sign the resolution (Exhibit B), and ordinances (Exhibits D, E, and F).
- 3) Certify the Final Environmental Impact Report (FEIR) and adopt the Mitigation Monitoring and Reporting Program (MMRP).
- 4) Adopt the California Environmental Quality Act (CEQA) required findings and statement of overriding considerations (Exhibit G)

SUMMARY

On January 26, 2010, your Board held a public hearing to consider adoption of the Grading and Stormwater Management General Plan and Ordinance Revisions. At that time, your Board took public testimony and tentatively approved the proposal, excluding those provisions affecting agricultural grading. The hearing was then continued to March 2, 2010 to focus discussion on agricultural grading.

DISCUSSION

At the January 26, 2010 hearing, your Board identified several topics for discussion, which are addressed in this order:

- Proposed five (5) year dormancy period for grazing and crop production activities
- Native vegetation removal for rangeland purposes
- Separate threshold for agricultural grading
- Landowner responsibilities described on the agricultural grading form
- Benefit of changes to the agricultural grading process
- The process
- Opportunities for clarification
- Differences between the current and proposed ordinances
- Requirements in other counties

Proposed five (5) year dormancy period for grazing and crop production activities

In developing the proposed language associated with *Ongoing crop production and grazing* [Section 22.52.070.B.11/23.05.032.b(11)]; staff reviewed other County ordinances that have similar agricultural activities. Mendocino County and San Diego County both have standards for ongoing crop production activities.

San Diego County uses the same standard proposed by staff. Land must be in crop production for one of the preceding five years in order to qualify for ongoing agriculture pursuant to the above referenced sections.

An important note in this discussion relates to the definition of “excavation.” Planting on grade (including activities associated with crop production, such as cultivation, disking, harrowing, ranking or chiseling, planting, plowing, seeding, or other tilling activities) do not require a grading permit, therefore it is not necessary to determine if these activities are subject to said exemption or time restrictions. These activities are exempt because they are not grading as defined by the ordinance.

Planning staff has had additional discussions with the Agricultural Commissioner’s office regarding the appropriate threshold for *Ongoing crop production and grazing*. Their office has concerns that, if the period is too brief, then fallowed fields would be captured by the dormancy period. They also stated that in most local situations, fields will not be out of production (fallow) for greater than a five-year period.

Options for your Board to consider:

- Five (5) year requirement;
- Ten (10) year requirement;
- Elimination of requirement (any historic agricultural production would be allowed under this exemption); or
- Other

Part of the reason for quantifying a dormancy period for ongoing crop production is to distinguish between new fields, which require an agricultural grading form, and existing fields, which do not. New fields may require permits from other agencies, and are generally more

likely to result in sedimentation and erosion problems. Requiring the form for new fields allows the County to make landowners aware of the above concerns.

Native vegetation removal for rangeland purposes

Native vegetation means plants such as trees, shrubs, herbs, and grasses that grew naturally in San Luis Obispo County before European arrival; plants from other parts of the United States or from other countries are not considered native.

Native vegetation is important, because it typically provides greater soil retention capacity than non-native species. This is due to the plants (including their root systems) being adapted to the local climate conditions. The root systems of native species typically reach deeper and wider than non-natives species which assists in soil retention capabilities. Additionally, native vegetation provides ecological benefits, such as:

- habitat for plants and animals;
- preventing land degradation, such as salinity and erosion;
- minimizing impacts of the greenhouse effect;
- maintaining long-term productive capacity of the land; and
- protecting water quality and, in some cases, water availability.

How is it measured?

Native vegetation removal under this exemption would be measured by the ground area where native vegetation removal has occurred (i.e. length x width). Native vegetation removal that exceeds the established threshold would not be considered exempt. Removal would only be allowed as authorized by Section 22.52.060A.3 / 23.05.030.a(3) (Removal of native vegetation). Staff recommends adding an additional qualifier associated with establishment of an appropriate ground cover where native vegetation has been removed. The purpose of the language would be to clarify when previous vegetation removal would no longer be considered cumulatively for the purpose of the standard. The proposed language can be found in Exhibit A – Requested Clarifications, change #2.

Implementation concerns

An important note in this discussion relates to the applicability of the proposed native vegetation removal standard. The established threshold is not applicable to crop production, fire safety, and other development. The proposed language is only applicable to native vegetation removal associated with rangeland management projects. Conversations with the agricultural community indicated a desire to have this standard applicable to all activities, not just rangeland management. An amendment of this nature could result in a concern for on-going crop production. This is in part due to the leafy green food safety setback requirements for row cropped areas. Staff does not suggest making this standard applicable to all activities due to concerns associated with on-going crop production as well as fire safety issues.

If the term “for rangeland management purposes” were removed, one could assert that the native vegetation removal is associated with future crop production or other future development activities. There is no standard associated with “when” one will plant a site (i.e. native vegetation removal for new fields) or develop projects on a site, which may be a concern of your Board. Specific to fire safety, vegetation removal consistent with Cal Fire recommendations is exempt from County permitting requirements as well.

To avoid some of these concerns, your Board may consider a few options:

- Require that no vegetation removal associated with development occur prior to issuance of applicable land use / construction / grading permits;
- Require that, if vegetation removal is to accommodate crop production, a crop be planted within specified time frame (to be determined by your Board);
- Other

What is the appropriate threshold?

The Planning Commission established the threshold of ½ acre on the basis of the land use permit requirements found in Section 23.03.040.d(9) of the Coastal Zone Land Use Ordinance (CZLUO). In the coastal zone, a land use permit is required for crop production and grazing where more than ½ acre of native vegetation is proposed to be mechanically removed.

The Board may wish to consider an alternative threshold associated with native vegetation removal. This could include allowing vegetation removal up to an acre, consistent with the requirement for preparation of a Stormwater Pollution Prevention Plan (SWPPP). If the protection of soil and water quality is the primary concern of the Board, this may be an appropriate threshold since the State Water Resources Control Board (SWRCB) has already established this as an appropriate threshold for their requirements. The land use ordinances (Table 2-3/3A) also have permit requirements based upon area of disturbance. An acre of disturbance requires a Minor Use Permit in all land use categories except Agriculture for single family residences.

Options for your Board to consider:

- ½ acre of native vegetation removal threshold;
- 1 acre of native vegetation removal threshold;
- Separate threshold associated with specific type of vegetation removal (i.e. mechanical, biological, fire, chemical, etc.);
- ½ acre of contiguous native vegetation removal where buffer strips are provided between areas of vegetation removal (an appropriate buffer should be established if this threshold is desired);
- Removal of native vegetation removal standard because a sedimentation and erosion control plan is required by Section 22.52.120.A.3¹

The Board may wish to encourage landowners and managers to keep a record of the native vegetation which is removed under this exemption. The record can include photos, maps and details of the amount and type of vegetation removed, the date of the removal, method of removal, and the date that appropriate cover has been established in areas of vegetation removal. This information may be important to demonstrate compliance with the exemption.

¹ The Agricultural Commissioner has identified that an erosion and sedimentation control plan could be applied to agricultural practices based upon the language contained in Section 22.52.120 / 23.05.042. Staff can modify these sections to clearly exempt agriculture from this requirement or conversely require the preparation of this plan associated with rangeland management projects. More discussion on this item can be found in the "Opportunities for Clarification" section of the staff report.

Separate threshold for agricultural grading

Substantial concerns have been raised with regard to the proposed cumulative (cut + fill) threshold. Staff has provided alternatives where the quantities would be specific to the cut (excavation) or fill. Staff believes that making the threshold apply only to the cut (excavation) or fill would provide a greater flexibility for agriculturalist to perform typical small agricultural operation without the need to consult the ordinance (the activity would not be considered grading by the ordinance). This speaks to the process of first determining if your activity is subject to the ordinance. By establishing a larger threshold for agricultural grading activities, fewer activities would be subject to the provisions of the grading ordinance and would likely reduce concerns expressed by the agricultural community.

Staff has had an additional meeting with concerned agriculturalist and local grading contractors (February 10, 2010 at the Farm Bureau office). These individuals provided “real world” examples of how different thresholds may effect their agricultural operations. In general, the consensus of group was to provide a larger threshold specific to agricultural grading activities. Suggestions provided at the meeting included 500 cubic yards, 1,000 cubic yards, and 1,500 cubic yards for agricultural grading thresholds (examples of how these thresholds would affect individual agricultural activities will be included in staff’s presentation).

Options for your Board to consider:

- Existing proposal – 50 cubic yards (cumulative)
- 50 cubic yards (3/4 inch deep)* (540 feet)**
- 100 cubic yards (1 ½ inches deep)* (1080 feet)**
- 250 cubic yards (3 ¾ inches deep)* (2,700 feet)**
- 500 cubic yards (7 ½ inches deep)* (5,400 feet)**
- 1,000 cubic yards (15 inches deep)* (10,800 feet)**
- 1,500 cubic yards (22 ½ inches deep)* (16,200 feet)**

* *Depth of material spread over ½ acre of level land*

** *Length of 10 foot wide road on level land with 3 inches of base*

Certified Grading Program

There was also a discussion regarding a “Certified Grading Program” at the above referenced meeting. Grading contractors are the “tracks on the ground” and have the potential to be a valuable partner in preventing erosion and sedimentation. Under this concept, certified grading contractors would be those who have completed a County approved training program related to the implementation of appropriate sedimentation and control measures and appropriate grading practices.

To be considered a certified grading contractor, one would be required to attend a County-approved training program and receive a passing grade. A certificate would be awarded by the approved training program which would demonstrate that the contractor has knowledge in the appropriate application of erosion and sedimentation control best management practices (BMPs). If a landowner chooses a certified grading contractor, then specified alternative review items could be completed without the need to go through the alternative review process but would still require completion of the applicable form. The applicant and contractor would both be required to sign the required form, stating they understand and will implement the required erosion and sedimentation control BMPs along with any other agency’s requirements. If the

contractor chosen to perform said work was not on the list of qualified grading contractors, then the approved threshold would apply and the alternative review process would be required.

This option could result in multiple benefits including the protection of valuable agricultural soils from erosion as well as cost savings for the landowners on specified alternative review activities. It would also reduce the likelihood of unlicensed contractors being chosen for agricultural grading operations because choosing one of the certified grading contractors would provide a benefit. If a contractor was found to be in violation of implementing appropriate sedimentation and erosion control measures, upon the request to complete additional “alternative review” activities (filing the form), the County would not authorize use of said contractor for the proposed work without RCD oversight.

If your Board decides to include a provision for a certified grading program, staff does not recommend that your Board allow the construction of agricultural roads or ponds without oversight of the RCD / NRCS or the County. Staff would not support these items in a program of this nature for the reasons that have previously been discussed regarding enforcement and life safety issues as well.

A discussion of extending this program to landowners who attend a certification course took place as well. Staff has concerns with the ability address erosion from landowner-constructed projects that fail to incorporate adequate erosion and sediment control BMPs. This could be problematic from an enforcement perspective.

Your Board may wish to consider a certified grading program as discussed at the February 10, 2010 meeting and summarized above.

Landowner responsibilities described on the agricultural grading form

Concerns have been raised regarding the content of the proposed forms (Agricultural Grading / Alternative Review Forms). The forms have been revised (see Exhibit H) based upon concerns raised during the public hearing and direction provided by your Board. Revisions include a statement that the landowner “should” contact applicable resource agencies based upon typical activities that may require said agencies approval as well as contact information for said agencies.

While staff has made the requested revisions to the applicable forms, it is important to note that the existing grading ordinance, Section 22.52.050.A.2 states:

“Grading activities shall receive any necessary approvals from other County, state or federal agencies, regardless of whether the activity is exempt under this Chapter.”
(emphasis added)

Since this is not a standard, staff had made this a note in Sections 22.52.070 / 080 so the language is not “hidden” within the standards. The intention was to make landowners aware of existing and future responsibilities by placing the note in the beginning of the applicable sections where exemptions from ordinance provisions are granted. The language of the proposed ordinance now reads:

“Note: While the activities under this section are exempted from a grading permit for the purposes of this County’s ordinance, the owner and/or applicant should understand that

permits may be required by other regulatory agencies, including, but not limited to, the California Department of Fish and Game, Regional Water Quality Control Board, Army Corps of Engineers, U.S. Fish and Wildlife Service, or the California Department of Forestry (Cal Fire)."

Staff does not believe this represents a major change in the ordinance language but rather has been moved to a readily accessible location where it can be more easily found for the common user of the ordinance (in the front of applicable ordinance sections and on the proposed forms).

With regard to the "Certified Grading Program" discussed above, staff had discussions about the contents of the form with the representatives of the agriculture community at the February 10, 2010 meeting. If this option was chosen, staff commented that it would be appropriate to include the grading contractor's information on the form (and signature) as well as the proposed erosion and sedimentation control BMPs to be used for said project. These items would be included as part of the alternative review process therefore it is appropriate to identify these measures if this option was chosen. It was agreed by the majority of the participants at the meeting, that additional information on the form would be acceptable if the alternative review process was not required.

Whatever conclusion your Board comes to with regard to the ordinance, the forms can be modified to reflect your concerns.

Benefit of changes to the agricultural grading process

The current agricultural exemption process, and language contained therein, has proven to be problematic with regards to enforcement and implementation of the required management practices. Below is some of the existing language that has been problematic in implementing and enforcing over the years (specific to the agricultural exemptions). The existing ordinance contains both non-mandatory language and unclear standards. The excerpts below are taken from the *Exempt Agricultural Grading - Agriculture* section of the existing ordinance (Section 22.52.050.C):

- **1.c.** "Cut and fill slopes shall be successfully revegetated and maintained..."
Problem: There is no timeframe established for completion of revegetation and there is no success criterion. This language is problematic for enforcement.
- **2.** "...it may be determined to be exempt..."
Problem: Who makes this determination?
- **2.a.** "Appropriate management practices are encouraged to be incorporated..."
Problem: Appropriate management practices are not required but are encouraged. This language is problematic for enforcement.
- **2.a(4)** "These should be installed under proper practices..."
Problem: Appropriate management practices are not required but should be used. This language is problematic for enforcement.
- **2.a.(5)** "Effective erosion control, revegetation, and site restoration are required."

Problem: There is no description of what effective means. This language is problematic for enforcement.

- **2.a.(7)** "A small storage reservoir..."

Problem: There is no description of what small means. This language is problematic for enforcement.

- **2.b.(3)(b)** "A grading permit may be required for the agriculturally exempt road in the future..."

Problem: Who determines and under what circumstances?

- **2.b.(3)(b)** "Further, the road may be required to meet all current standards."

Problem: Who determines and under what circumstances?

- **2.b.(3)(g)** "Cut and fill slopes can be successfully revegetated..."

Problem: Cut and fill are not required to be successfully revegetated. This language is problematic for enforcement.

- The current ordinance lists 32 specific NRCS practices. The NRCS office notes that most of these practices, including many exempt practices, require an engineer to properly implement. At least four listed practices in the current ordinance (552A, 204, 400, and 404) are no longer recognized as appropriate by the NRCS in California. This means the current ordinance references practices that are no longer used by NRCS which make the implementation of those practices (as referenced) even more problematic.
- The layout of the current ordinance lists a large variety of grading activities under the section *Exempt grading activities - Agricultural* that actually requires specific standards be met (FOTG practices for Level 2, review and approval by the NRCS or RCD for Level 3, or a grading permit for Level 4). This exacerbates confusion about what is actually exempt and what requires review and approval.

Staff believes that the proposed revisions to the agricultural provisions will eliminate much of the confusion described above. Staff supports the proposed changes for the following reasons:

- The non-mandatory language has been removed from the proposed ordinance language and replaced with prescriptive language;
- Staff has provided clarifying language (at the request of your Board) where applicability of provisions were in question;
- No more reference to specific outdated FOTG practices numbers (these practices changes over time);
- The Enforcement Division approves of the changes because they will be able to enforce the proposed language;
- The Agricultural Commissioner's office will "sign off" the activities that have historically been abused by non-agriculturalist;
- Removes conflicting provision within the existing ordinance (e.g. ponds as Level 2 and Level 3, major vs. minor stream bank enhancements, trail exemptions, etc.);
- Documentation of successful agricultural grading activities which will help protect the exemptions for future generations;

- The Enforcement Division can easily verify agricultural grading activities through the existing tracking system;
- Staff can provide information regarding other agency permitting requirements through use of the forms;

Some have expressed concern that the proposed ordinance would duplicate the requirements under the Regional Water Quality Control Board's (RWQCB's) irrigated agriculture discharge waiver. The Agricultural Commissioner's office has provided the following response from Allison Jones, Central Coast RWQCB by email on January 27, 2010 that reads as follows:

"Although it is correct that we do have regulatory authority over agricultural discharges (both irrigated and non-irrigated), I believe an effective county grading ordinance is very important in preventing erosion problems, so I would not concur with the conclusion that it is not needed. Especially in the case of rangeland, they would only come to us if they were going to do work in a stream and needed an Army Corps permit. Otherwise, we do not necessarily get involved with roads and other activities unless there is a problem. Having ag work with the county, (and through the system of referrals to the RCD), is a good way to ensure that they are doing things correctly, and preventing problems before they occur. Also, in the past we have often found the counties with their ordinances to be good partners in finding solutions to various road and ag-related erosion issues."

The process

The proposed process is best described in the flow chart attached as Exhibit I. In general, the proposed process includes a maximum of four questions one must ask themselves to determine the status / permit level of their agricultural grading activity. The questions must be asked in the following order to determine status of the proposed grading activity:

- 1) Am I grading as defined?
- 2) Do I qualify as exempt?
- 3) Do I qualify as agricultural grading?
- 4) Do I qualify for alternative review?

The RCD offices and planning staff will be available for assistance if landowners have questions regarding the applicability of the standards. The following actions are required based upon the status of a potential agricultural grading activity:

Exempt – No action required.

Agricultural Grading – File the form and begin work.

Alternative Review – File the form, approval from Planning and Building, acceptance from RCD, Agricultural Commissioner review (roads and ponds only), prepare / review construction plans with RCD, and construct the project.

Grading Permit – Existing County process.

Public Outreach

The public outreach component of the grading ordinance revisions are proposed to take place in a number of ways. The County's Stormwater Management Plan (SWMP) currently requires the County to do outreach to the professional communities we work with on a regular basis. After

adoption of the Board approved grading ordinance, staff will use the existing mailing list to transmit information to the professional communities (e.g. architects, engineers, grading contractors, etc.). Additionally, the Board may wish direct staff to work with the Farm Bureau and other organizations such as the U.C. Cooperative Extension to “get the word out” to stakeholders. As seen at the previous hearing, these organizations have an ability organize and bring people together who share a common concern. Staff will continue to work with the Home Builders Association (HBA) regarding the implementation of the Low Impact Development (LID) Handbook to ensure their concerns are understood and addressed. Finally, the Planning Department will work on an internal implementation manual to help train staff on the revisions to the grading ordinance to ensure that all staff members understand the ordinance and implement the ordinance consistently.

Opportunities for clarification

At the January 26, 2010 Board of Supervisors hearing, your Board directed staff to provide clarifying language on a number of topics. The following clarifications were made to the text of the ordinances:

- 1) “Grading” includes removal of vegetation for rangeland management purposes.
- 2) The native vegetation removal threshold applies to a “site,” and is only triggered when one-half acre or more of bare soil is present.
- 3) Piecemealing a project to avoid triggering the threshold is not allowed.
- 4) The County is not *requiring* that applicants contact state agencies.
- 5) Drainage improvements are also allowable under the ongoing agricultural exemption (existing fields) and under agricultural grading (new fields).
- 6) Exportation of soil fertility amendments is permissible under the ongoing agricultural exemption.
- 7) Internal roads within a field shall also qualify for the ongoing agricultural exemption.
- 8) The routine maintenance exemption includes maintenance to ponds and equestrian facilities, and importation of material.
- 9) Erosion and sedimentation control devices shall prevent sediment from entering rivers.
- 10) “New agricultural roads” includes extending the length or width of existing roads.
- 11) Emergency provisions may include work needed to save an agricultural crop.
- 12) Grading contractors are also liable for grading violations.
- 13) Education and outreach includes farmers and ranchers.
- 14) “Native Vegetation” and “Rangeland Management” are defined.

The above clarifications have been incorporated to the attached ordinances (Exhibits D and E). The specific language changes for these clarifications are shown in Exhibit A.

Planning staff has received the following additional requests for clarification from other parties:

Code Enforcement

- **Clarify that failure to file a form for “agricultural grading” is not subject to violation fees if the applicant files the form after-the-fact.**

Rationale: Staff has previously stated that the remedy for parties who fail to file an agricultural grading form would be to file the form after-the-fact. Code Enforcement staff expressed some concern that if a complaint was received and it was verified that an

agricultural grading activity occurred without previously filing the form, that party could be subject to fines.

Options for your Board to consider:

- Keep existing ordinance language in place.
- Add a provision to Section 22.52.190C / 23.05.056.c which would specify that the remedy for failure to file a form pursuant to Section 22.52.070C / 23.05.032.c would be to file the form after-the-fact. Additionally clarification could be provided asserting that where the only violation was failure to file a form, no fine shall be applied.

Agricultural Community

On February 10, 2010, County Planning staff met with representatives of various agricultural organizations, including representatives from the Farm Bureau, Paso Robles Wine Country Alliance, Agricultural Liaison Advisory Board, and local grading contractors. During this meeting, the following clarifications were requested:

- **Clarify the distinction between “streambank protection measures” under Alternative Review versus “conservation, restoration, and enhancement projects” under Exempt Grading.**

Rationale: There was some concern that any streambank restoration project would automatically require Alternative Review to proceed. Staff clarified that this work could proceed under the “conservation, restoration, and enhancement” exemption as long as another state or federal agency serves as a permitting authority. Projects which do not involve other state or federal agencies would then need to seek approval through the alternative review process. Some confusion was attributed to the inclusion of a provision under the alternative review section requiring that streambank restoration still needs to obtain any required state or federal permits.

Options for your Board to consider

- Retain existing language.
- Delete a portion of Section 22.52.080B.5 / 23.05.034.b(5): “with appropriate Fish and Game alteration agreements/permits, Regional Water Quality Control Board permits, and Army Corps permits, as required.” Streambank protection measures requiring any of these permits would be able to proceed as exempt under Section 22.52.070B.7 / 23.05.032.b(7).

- **Clarify that the ongoing crop production exemption includes repair or restoration of existing fields.**

Rationale: Some individuals were concerned that the ongoing crop production exemption could be read not to allow repair and maintenance of existing fields. This exemption is intended to allow any grading within existing fields necessary to continue to ongoing crop production.

Options for your Board to consider:

- Retain existing language, which implicitly allows all grading activities needed for ongoing crop production.

- Add a sentence to Section 22.52.070B.11.a / 23.05.032.b(11)(i) which states:
“This exemption includes repair or restoration of existing fields.”
- **Clarify that the ongoing crop production exemption is not limited to cultivation activities.**

Rationale: The ongoing crop production exemption is intended to allow any grading needed to accommodate ongoing crop production on existing fields. The current ordinance text does not specify which grading activities are explicitly allowable. This exemption applies to land that has been cultivated within the previous five years. The activity of “cultivation” is referenced, with some examples of cultivation activities, for the purposes of delineating what “previously cultivated” land means. Some have interpreted that this exemption applies only to those cultivation activities and not to other grading activities, such as re-contouring the land, laser leveling, etc.

Options for your Board to consider:

- Retain existing language, which implicitly allows all grading activities needed for ongoing crop production.
 - Revise the last sentence in Section 22.52.070B.11.a / 23.05.032.b(11)(i) as follows: Cultivation Previously cultivated land shall include any land where the following practices have occurred: disking harrowing, raking or chiseling, planting, plowing, seeding, or other tilling.
 - Provide additional language specify which specific activities are allowable or unallowable under the exemption.
- **Specify in Section 22.52.060A / 23.05.030.a that cultivation activities do not constitute grading.**

Rationale: Grading is defined as activities involving such things as excavation and fill. The Planning Commission’s recommendation specifically excludes cultivation activities from being considered “excavation.” Therefore these activities are not considered “grading” under the proposed ordinance and would not be counted toward cubic yardage. Some in the agricultural community have expressed concern that this should be clearly spelled out in the ordinance rather than solely being referenced in the definition of “excavation.”

Options for your Board to consider:

- Retain existing language, which already has the effect of excluding cultivation activities from the definition of grading.
 - Add a clarifying sentence to Section 22.52.060A / 23.05.030.a that states clearly that specific cultivation activities are not considered “grading” under the ordinance.
- **Specify that the ongoing grazing exemption applies throughout a site where grazing has previously occurred.**

Rationale: The ongoing grazing exemption is presently worded to apply only to lands where grazing had occurred within the previous five years. The intention was that any

portion of the site where grazing had previously occurred could use the exemption. The request is to replace the word “lands” with “site.”

Options for your Board to consider:

- Retain existing language, which would allow the ongoing grazing exemption to be used only on portions of a site that were previously grazed.
 - Replace the word “land” with the word “a site” in Section 22.52.070B.11.b / 23.05.032.b(11)(ii). This would mean that even if only a small portion of a site was previously grazed, grading for ongoing rangeland purposes could occur on any portion of the site under the exemption.
- **Allow upland restoration to occur as “agricultural grading.”**

Rationale: Presently, the ordinance does not recognize upland restoration as an activity. Upland restoration can include such things as repairing erosion (i.e. gullies), re-grading for sheet flow, laying back a slope, and upland flow interceptors designed to re-direct and slow drainage. Upland restoration is proposed to fall under the alternative review program. This practice was included in the proposed ordinance at the request of the Upper Salinas – Las Tablas Resource Conservation District (RCD). This request was made, in part, because upland restoration is an activity covered in the RCD’s multi-jurisdictional “Partners in Restoration” permitting program. The request is made to allow these activities to occur under agricultural grading, as upland restoration promotes erosion control, and requiring alternative review may be too onerous.

Options for your Board to consider:

- Retain existing standards, which means that upland restoration could occur under the alternative review program.
- Allow upland restoration to occur under “agricultural grading” (i.e. filing a form), only when site work is balanced (i.e. no import/export). Imbalanced site work would need to proceed under the alternative review program.
- Allow upland restoration to occur under “agricultural grading” (i.e. filing a form), and allow importation and exportation of material to occur through that process.

Agricultural Commissioner

- **Clarify whether an erosion control plan is required for agricultural practices.**

Rationale: The current ordinance requires erosion and sedimentation control plans be submitted concurrently with a grading permit for most projects. The proposed ordinance requires an erosion and sedimentation control plan for projects involving more than one-half acre of site disturbance, even when such a project would not require grading permit approval. The Agricultural Commissioner has raised the point that this section could be construed to require an erosion and sedimentation control plan for agricultural practices.

Options for your Board to consider:

- Add a clarifying statement that an erosion and sedimentation control plan is not required for agricultural projects found to be exempt under Sections 22.52.070 / 23.05.032 and 22.52.080 / 23.05.034.
- Apply the erosion and sedimentation control plan requirement to agricultural practices.

- Apply the erosion and sedimentation control plan requirement only to rangeland management projects. This may be considered an alternative to keeping the rangeland management threshold, as this would still require erosion and sedimentation control practices be applied.

Differences between the current and proposed ordinances

Exhibit K (attached) provides a summary of existing and proposed inland ordinance provisions that affect agricultural grading. The key differences between the two ordinances are as follows:

- The threshold for what constitutes “grading” is changed. This means more projects would trigger grading ordinance standards.
- A new threshold is added for native vegetation removal specific to rangeland management projects.
- Cultivation activities no longer count towards the cubic yard thresholds.
- Language mandating that applicants obtain necessary state and federal permits has been changed to more of a disclaimer that state and federal permits may be necessary.
- Importation of material from off-site locations is allowable only in limited contexts (i.e. soil fertility amendment, routine maintenance projects, etc.).
- An “agricultural grading form” will need to be completed before grading for new fields and small reservoirs.
- Alternative review is now required for the following types of projects (presently exempt):
 - Small agricultural roads on slopes <30 percent and meeting several other criteria.
 - Native vegetation removal of over one-half acre for the purposes of creating new rangeland.
 - Trails and recreational improvements.
 - Streambank protection and other conservation measures, only when permits from state/federal agencies are not required.
- Alternative review may be pursued, rather than a grading permit, for ponds located in blue-line streams.
- The Planning and Building Department will have a role in verifying that projects qualify for alternative review.
- The Agricultural Commissioner’s role in the alternative review process will be reduced to reviewing roads and ponds only.
- Unpermitted (“as-built”) projects will require the Director’s consent to be processed as alternative review.

Requirements in other counties

In November 2009, the Planning Commission directed staff to review the requirements in five other Counties. The purpose of the review was to aide the Commission in determining the slope percentage at which new fields should require alternative review. At the direction of the Commission, the review was focused on other wine-producing counties and counties that include orchard development. The five counties reviewed were Monterey, Napa, San Diego, Santa Barbara, and Sonoma. A chart, attached as Exhibit J summarizes the permitting requirements for agricultural grading in these Counties. The following is a brief synopsis:

- The proposed ordinance's threshold is stricter than Monterey, San Diego, and Sonoma counties; but not as strict as Napa and Santa Barbara counties.
- Agricultural exemptions are generally more restrictive in the other counties reviewed than what is proposed. They tend to be limited to cultivation activities (i.e. ongoing crop production or new fields).
- None of these counties have an alternative review process.
- Some counties have an "agricultural grading permit," which is a reduced version of a standard grading permit.
- Some counties require an erosion control permit in place of or in conjunction with a grading permit. Some jurisdictions have additional permit requirements.
- The only county exempting roads and ponds from county permits is San Diego. Even then, the site work must involve less than 200 cubic yards (cumulative). The other counties all required some form of county permit for roads and ponds.
- Some counties require a land use permit and/or California Environmental Quality Act (CEQA) review for some types of agricultural projects.

OTHER AGENCY INVOLVEMENT/IMPACT

The following agencies were consulted in the preparation of the public hearing draft ordinance and Environmental Impact Report:

County Agencies

- Agricultural Commissioner's Office
- Cal Fire / County Fire
- County Counsel
- Planning and Building – Building Division
- Public Works

Other Local Agencies

- Air Pollution Control District
- Upper Salinas / Las Tablas Resource Conservation District

State Agencies

- Central Coast Regional Water Quality Control Board

Advisory Boards

- Agricultural Liaison Advisory Board

Other Organizations

- Farm Bureau
- Home Builders Association
- Wine Country Alliance
- Santa Margarita Area Advisory Council (SMAAC)

Additionally, several local, state, and federal agencies were provided with a Notice of Preparation of the Environmental Impact Report. All cities and community advisory councils in the County were also provided with a copy of the notice.

FINANCIAL CONSIDERATIONS

Costs for the processing of county-initiated amendments are included in the department budget.

RESULTS

If the amendments are approved, they will become effective on April 1, 2010, 30 days after the date of final action. In the Coastal Zone, approval will allow submittal of the amendments to the California Coastal Commission for their review and approval. Denial of the applications will mean no change will occur and the County will not be in compliance with the adopted Stormwater Management Program.

ATTACHMENTS

Exhibit A	Requested Clarifications
Exhibit B	Resolution
Exhibit C	General Plan Amendments
Exhibit D	Ordinance Amending Title 22
Exhibit E	Ordinance Amending Title 23
Exhibit F	Ordinance Amending Specific Provisions of Title 23
Exhibit G	California Environmental Quality Act (CEQA) Findings
Exhibit H	Revised Forms
Exhibit I	Agricultural Grading – Process Flow Chart
Exhibit J	Comparison with Other Counties
Exhibit K	Comparison of Agricultural Grading Requirements between the Existing and Proposed Ordinances